EXPLOSIVES—DUMPING REFUSE ON VACANT LOTS—INJURY TO CHILDREN.—TRAVELL V. BANNERMAN, 75 N. Y. Supp. 866.—Defendant, an ammunition manufacturer, used an unfenced lot as a dumping place for refuse. Plaintiff was approached by two other boys with a mass of gunpowder found there, which exploded while they were extracting pieces of brass therefrom. *Held,* that action for injuries would lie, as it was a question for the jury whether defendant had used proper care. Goodrich, P. J., dissenting.

The court bases its decision on the ground that the presence of brass in the powder rendered it enticing to children and so brought it within the rule referred to in the leading case of *Walsh v. Railroad,* 145 N. Y. 301. But there would seem to be good reason for the contrary view, based on the principle that when a person comes upon the premises of another without invitation he is a bare licensee, and if any injury is sustained by reason of a defect in the premises, the owner is not liable. *Cusick* v. *Adams,* 115 N. Y. 55; *Larmore v. Iron Co.,* 101 N. Y. 391. In the recent case of *Brinkley Car Works & Mfg. Co. v. Cooper,* 67 S. W. 572, the Supreme Court of Arkansas followed *Gillespie v. McGowan,* 100 Pa. 144, and refused to recognize the New York doctrine, saying that to follow it to its logical conclusion would "charge the duty of protecting children upon every member of the community except upon their own parents."

HIGHWAYS—PEDESTRIANS—WALKING AT NIGHT—NEGLIGENCE.—SIEGLER V. MELLINGER ET AL., 52 Atl. 175 (Pa.).—Plaintiff sued town supervisors for damages for an injury from a fall sustained, while walking at night, on the sidepath of a township road. *Held,* that he was presumptively negligent in using the sidepath, the middle of the road being, prima facie, the saf st portion for travel at night.

This court seems to have carried the doctrine of presumptive negligence to an extent contrary to well settled law. A traveller has a right to presume that a highway in use, including the margin thereof, is reasonably safe for ordinary travel. *Davenport* v. *Ruckman,* 37 N. Y. 568. He may presume this at night-time, as well as in daylight. *Pettengill* v. *Yonkers,* 116 N. Y. 558. Travellers on country roads, as well as elsewhere, are privileged to use the entire highway as laid out. *Siddons v. Gardner,* 42 Me. 248; *Seward v. Milford,* 21 Wis. 485.

INDEMNITY INSURANCE—ATTORNEY AND CLIENT—NEGLIGENCE IN APPEAL—BURDEN OF PROOF.—GETCHELL & MARTIN LUMBER & MFG. CO. V. EMPLOYERS' LIABILITY ASSUR. CO., LTD., 90 N. W. 616 (Iowa).—An employer who was insured against loss for personal injuries to its employees to the amount of $1,500 in case of injury to any one employee, was sued by an injured employee, who obtained judgment for $4,300. The insurance company had defended the action and agreed to appeal, but on its failure to perfect it in time, judgment was affirmed on motion. In an action by the employer against the insurer for negligence, *held,* that the burden was on the insured to show damage thereby.

The court refuses to follow the rule laid down in *Godefroy* v. *Jay,* 7 Bing. 413 and followed in *Whart., Neg.,* Sec. 752; *Sherm. and Red., Neg.* (5th ed.) Section 566, that where negligence is shown, resulting in a judgment against the client, the attorney has the burden of showing that the client was not damaged thereby. The rule has been criticized in other cases. *Collier* v.

Pulliam, 13 Lea 114; *Harter* v. *Morris,* 18 Ohio St. 492. Those cases which follow *Godefroy* v. *Jay* differ from the present case because in them the injured client was a *plaintiff* whose attorney's negligence lost or diminished the judgment. *Moorman v. Wood,* 117 Ind. 144. Here the client was a defendant, against whom in the lower court judgment had been recovered, and he must overcome the presumption that the judgment would stand on appeal. I *Greenl., Ev.,* Section 19. See also *Cox* v. *Sullivan,* 7 Ga. 144.

LICENSE—REVOCATION—ESTOPPEL—TRESPASS.—HICKS ET AL. V. SWIFT CREEK MILL CO., 31 So. 947 (Ala.).—The defendant company under a personal license constructed and operated a ditch and dam on the land of one Smith. Smith conveyed the land in question to the plaintiff. *Held,* that the license of defendant was thereby revoked and that the plaintiffs might maintain trespass against the licensee for his continuance in possession.

The sole question here at issue is whether defendant acquired an irrevocable license from plaintiff's grantor; if so, it follows as of course that plaintiffs would have no right of action. There is an absolute conflict of authorities as to the effect of the execution of a parol license upon the power of the licensor to revoke. Such executed license is held irrevocable by many states. *Cook* v. *Pridgen,* 45 Ga. 331; *Snowden* v. *Wilas,* 19 Ind. 10; *Vannest* v. *Fleming,* 79 Iowa 638; *Swartz* v. *Swartz,* 4 Pa. St. 353. England and perhaps a majority of our states hold a license revocable under all circumstances. *Adams* v. *Andrews,* 15 Q. B. 284; *Cook* v. *Stearns,* 11 Mass. 533; *Selden* v. *Canal Co.,* 29 N. Y. 639. Some courts, admitting that the statute of frauds prevents the creation of an irrevocable parol license, hold in the case of a definite contract that part performance takes the case out of the statute, and hence equity will recognize and enforce licensee's right in case of attempted revocation. *McManus* v. *Cooke,* 35 Ch. D. 681; *Wiseman* v. *Lucksinger,* 84 N. Y. 31

MISCONDUCT OF COUNSEL—IMPROPER ARGUMENT—GROUND FOR REVERSAL. —STEWART V. METROPOLITAN ST. RY. CO., 76 N. Y. Supp. 540.—*Held,* that the misconduct of plaintiff's counsel was not cured by an instruction given at plaintiff's instance, that "in case either counsel, in summing up stated facts that were not proven upon the trial, or in case either counsel gave a recollection of the facts which disagree with the recollection of the jury, the jury may disregard these statements, and take their own recollection of the facts." Goodrich, P. J., dissenting.

This would seem to be unsupported by decisions exactly in point. That a refusal to interpose, where counsel proceed to dilate upon facts not in evidence is legal error is well settled. *Williams v. Railroad Co.,* 126 N. Y. 96; *Mitchum* v. *State of Georgia,* 11 Geo. 616; *Tucker* v. *Henniker,* 41 N. H. 317. But this ground would appear to be absent, where the defendant does not object at the time, and the judge sees fit to postpone a charge to disregard the irrelevant statements.

SALE ON SIDEWALK—THEATER TICKETS—TRANSFERABILITY.—COLLISTER V. HAYMAN ET AL., 75 N. Y. Supp. 1102.—*Held,* that an injunction will not be granted to restrain defendant from refusing to accept theater tickets sold on the sidewalk.

That a ticket to a race course was a mere license and might be terminated at any time without even returning the purchase price was held in the early English case of *Wood v. Leadbitter,* 13 Mees & W. 837. That a thea-